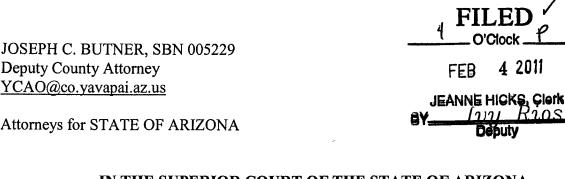
Office of the Yavapai County Attorney 255 E. Gurley Street, Suite 300



IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

CAUSE NO. P1300CR201001325

Plaintiff,

VS.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

Facsimile: (928)

Phone: (928) 771-3344

STEVEN CARROLL DEMOCKER,

Defendant.

STATE'S REPLY TO DEFENDANT'S RESPONSE TO STATE'S MOTION FOR CLARIFICATION OF RULING

RE: NOTICE

Assigned to Hon. David L. Mackey

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned hereby submit its reply to Defendant's Response to State's Motion for Clarification of Ruling re: Notice. The State's reply is supported by the attached Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

The defense argument is that the newly indicted consolidated case is the same case as the original homicide. That simply isn't accurate.

The criminal charges arising out of the Hartford Life Insurance scheme was a new circumstance that the State did not learn about until June 2010. It was not until John Sear's opening statement that the State learned that the Hartford Life Insurance Policies had been paid. The State was in contact with Hartford Insurance company and was led to believe that the life insurance

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

benefits would not be paid out until the Defendant was cleared of the murder charge. In fact, Hartford sent several letters to the Defendant until January of 2009 stating that the life insurance monies would not be paid out to him until he was cleared of the murder charge.

Upon hearing John Sear's opening statement, the State immediately began an investigation and served numerous subpoenas to obtain evidence of the reason the life insurance claims were paid after having been denied multiple times. The State then received evidence needed to charge the Defendant with the life insurance fraud scheme. It became apparent that the defendant had hoodwinked the insurance company into believing that he did not maintain dominion or control over the life insurance proceeds by giving the insurance company disclaimers. Until the State had this evidence the State could not have charged the Defendant with crimes arising from the Hartford Life Insurance fraud scheme.

The newly consolidated indictment incorporates the original homicide and burglary case with the newly discovered charges of the life insurance fraud scheme, the voice in the vent fraud scheme, and the manufactured email fraud scheme. The new indictment was necessary as a result of the newly discovered life insurance fraud scheme as well as the fraud schemes concerning the voice in the vent and the manufactured email that arose during the trial. Godoy v. Hantman, 205 Ariz. 104, 106, 67 P.3d 700, 702 (2003) states "New indictment begins a separate matter, and thus, the right to a peremptory change of judge applies as if no prior criminal action had been filed." In accordance with Godoy, supra, the State was within its right to file a Notice of Change of Judge. The new indictment was not an effort by the State to eradicate the law of the case or obtain a new right to an ARCP 10.2 Notice of Change of Judge. The new indictment was necessitated by the defendant's newly discovered and ongoing criminal conduct. Regardless, the new indictment gave rise to a new right to file an ARCP rule 10.2 Notice of Change of Judge.

Prescott, AZ 86301 Phone: (928) 771-3344 Facsimile: (928) 771-3110	1	<i>"</i>
	2	RESPECTFULLY SUBMITTED this 3/2 day of February, 2011.
	3	Sheila Sulliyan Polk
	4	YAVAPAI COUNTY ATTORN
	5	By: A. J.
	6	Joseph C. Butner Deputy County Attorney
	7	Deputy County Attorney
	8	CORY of the foregoing Emailed this 300 day of February, 2011, to:
	9	Howard David L. Marker
	10	Honorable David L. Mackey Division 1
	11	Yavapai County Superior Court (via email)
	12	
	13	Craig Williams Attorney for the defendant
	14	Yavapai Law
		3681 N. Robert Rd Prescott Valley, AZ 86314
	15	yavapailaw@hotmail.com
	16	(via email)
	17	Greg Parzych
	18	222 No. Central Ave. Phoenix, AZ 85004
	19	Co-counsel for the defendant
		gparzlaw@aol.com
	20	(via email)
	21	Christopher B. DuPont Trautman DuPont
	22	245 West Roosevelt, Suite A
	23	Phoenix, AZ 85003 Attorney for victims
	24	Katherine and Charlotte DeMocker
	25 _	(via email)
	26	By: Alma Dulan

Sheila Sulliyan Polk YAVAPAI COUNTY ATTORNEY